THE HON'BLE SRI JUSTICE GHULAM MOHAMMED
AND
THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.17494 of 2005

Date: 06th December, 2007.

BETWEEN:

Riyasat Ali Khan S/o.Durre Ali Khan,
R/o.No.736, Special "B" Class, Mallepally, Hyderabad,
Rep. by GPA Holder Mr.Mohd Ali Imam Najaf S/o.K.A.Kh;an,
Aged 43 years, r/o.10-2-317/35, Vijayanagar Colony,
Hyderabad.

...Petitioner

and

1) Government of Andhra Pradesh, rep. by Principal Secretary,
Revenue Department, Secretariat Buildings, Hyderabad and 3 ors.

...Respondents

THE HON'BLE SRI JUSTICE GHULAM MOHAMMED
AND
THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.17494 of 2005

ORDER: [PER HON'BLE SRI JUSTICE B.SESHASAYANA REDDY)

This writ petition has been filed by the petitioner in L.G.C.No.73 of 2000 on the file of the Special Court under A.P. Land Grabbing Court, Hyderabad, assailing the order dated 15.07.2005 passed in I.A.No.1420 of 2004 in LGC No.73 of 2000 whereby and whereby the learned Special Court allowed the said application and dismissed the L.G.C. on the principle of *res judicata*.

2. The petitioner herein filed L.G.C.No.73 of 2000 on the file of

the Special Court under A.P. Land Grabbing Court, Hyderabad seeking the following reliefs:

> "a) declaring the right, title and interest of the applicant in the application schedule A and B properties admeasuring Acs.2.00 of land in Sy.No.162 (old) New 6/2, 10 and 11 as deliniated in red in the sketch filed with the LGC.
>
> b) for permanent injunction restraining the respondents from making further constructions in A and B schedule properties;
>
> c) for punishing the respondents for indulging in land grabbing operations;
>
> d) for costs of this application;
>
> e) for such other reliefs as this Hon'ble Court may deems fit and proper in the circumstances of the case."

The respondents filed counter resisting the application. The first respondent in the LGC NO.73 of 2000 filed I.A.No.1420 of 2004 under Section 11 C.P.C. to dismiss the L.G.C. as it is hit by principle of *res judicata*. The petitioner filed counter resisting the application. The Special Court, on considering the material brought on record and on hearing the counsel for the parties, came to the conclusion that the findings recorded in O.S.No.27 of 1963 operate as *res judicata* and thereby proceeded to dismiss the LGC No.73 of 2000, by order dated 15.07.2005. Hence, this writ petition.

3. Heard learned counsel appearing for the petitioner and learned Government Pleader for Revenue (Assignment) appearing for the 1st respondent and learned Standing Counsel appearing for the 2nd respondent. 3rd respondent despite receipt of notice did not choose to enter appearance either in person or through a counsel. Notice sent to the 4th respondent returned with an endorsement of refusal.

4. Learned counsel appearing for the petitioner submits that the

subject matter in L.G.C. is not covered by the suit being O.S.No.27 of 1963 and therefore, any findings recorded in O.S.No.27 of 1963 are not relevant. He further submits that the petitioner claims title in the property through Smt.Johra Begum and since the said Johra Begum was not a party to the suit in O.S.No.27 of 1963, findings recorded therein do not bind the petitioner.

5. Learned Government Pleader for Revenue (Assignment) appearing for the 1st respondent and learned Standing Counsel appearing for the 2nd respondent supported the order of the Special Court.

6. It is a matter of record that the respondents in L.G.C. filed counters and the Special Court framed the following issues for trial:

1) Whether the applicant has title to application schedule property?
2) Whether the rival title set up by the Respondents 1 and 2 is true, valid and justifying?
3) Whether the proceedings are barred by *res judicata* as pleaded by Respondents 3 and 4?
4) Whether the respondents are land grabbers within he meaning of Act 12 of 1982?
5) And to what relief?

The petitioner specifically pleaded in the petition that the subject matter of the L.G.C. is different from the subject matter of the suit being O.S.No.27 of 1963. We deem it appropriate to refer relevant portion in the L.G.C. filed by the petitioner and it is thus:

> "16. It is learnt that one Afzal Hussain Abedi filed O.S.No.27/62 and Khursheed Ali Khan filed O.S.No.27/63 on the file of the Additional Chief Judge (temporary), Hyderabad when their lands given to them under registered lease deed were forcibly occupied by the respondents. It is learnt that Khursheed Ali Khan lost the case as he failed to establish his case. The said will was not known to Khursheed Ali Khan and the same

was kept with Smt.Kulsum Begum, the mother of the applicant. The said Khursheed Ali Khan fought on the ground that he was lessee from the said Mrs.Zohra Begum. In the said proceedings Zohra Begum was not a party nor the mother of the applicant was made a party, as such any proceedings between Khursheed Ali Khan and Government or the A.P. Housing Board does not bind the rights of the applicant in any way. The subject matter of the land in the said suits and the land under L.G.C. are totally different. The applicant came to know that Khursheed Ali Khan suffered a judgment in High Court which is being misrepresented by the respondents as if Zohra Begum had no right over the property. The tenant of Zohra Begum might not have established his case and by any stretch of imagination the same cannot be applied to the real owners."

7. The averments in the petition is very clear that the petitioner pleaded that the subject matter in the L.G.C. is quite different from the subject matter of the suit being O.S.No.27 of 1963. Therefore, the Special Court has to first adjudicate upon the issue whether the L.G.C. schedule property is part and parcel of the suit schedule property in O.S.No.27 of 1963, and thereupon the question of *res judicata* is required to be considered. The learned Special Court without adjudicating as to whether the property in the L.G.C. is part and parcel of the suit schedule property in O.S.No.27 of 1963 proceeded to adjudicate upon the principle of *res judicata*. It is like putting a cart before the horse. Therefore, the order impugned in the writ petition is liable to be set aside.

8. Accordingly, the order impugned in the writ petition is set aside. The Special Court having framed the issues one of which relates to the principle of *res judicata,* has to consider all these issues together during the trial. We make it clear that the Special Court has to decide the issues without being influenced by any of the observations made in I.A.No.1420 of 2004 in L.G.C.No.73 of 2000 or

by this Court in this order.

9. Accordingly, the writ petition is disposed of. No costs.

_____

GHULAM MOHAMMED, J.

_____

B.SESHASAYANA REDDY, J.

Date:06th December, 2007.

Cs/TNB